IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO. 873/2006
(Prakash Chandra Vs. State of Rajasthan)

Date of Order : 25/07/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Sandeep Mehta for the petitioner.
Mr. Ashok Upadhyay, public prosecutor for the State.

BY THE COURT:-

This criminal misc. petition is directed against the judgment and order dated 16.6.2002 passed by Additional Sessions Judge (Fast Track), Rajsamand (for short 'the appellate court' hereinafter) in Criminal Appeal No. 24/2006, whereby the appellate court set aside the judgment and order dated 4.3.2005 passed by Chief Judicial Magistrate, Rajsamand (for short 'the trial court' hereinafter) in Criminal Case No. 152/2000 convicting and sentencing the petitioner and remanded the matter with a direction to put the analysis report of Central Food Laboratory under Section 313 Cr.P.C. to the petitioner and decide the matter afresh.

I have heard learned counsel for the parties.

It is contended by learned counsel for the petitioner that the petitioner has challenged the judgment and order of the trial court dated 04.03.2005 on various counts but the appellate court without considering the contentions raised by the counsel for the appellant therein, as mentioned in the memo of appeal, straightway remanded the matter on the point.

On perusal of the judgment of the appellate court, it appears that the appellate court has not adverted to the contentions raised by the counsel for the petitioner and simply set aside the order of the trial court and remanded the matter with a direction to put the analysis report of Central Food Laboratory under Section 313 Cr.P.C., to the petitioner which is otherwise contrary to certain provisions of law.

This Court in Rameshwar Vs. State of Rajasthan 1998 (2) EFR 533 held that certificate of Director, Central Food Laboratory, even if not put before accused during his examination under Section 313 Cr.P.C., will not vitiate the trial, unless a prejudice is shown to have been caused. In that case, accused himself had applied for analysis of the sample by Director, Central Food Laboratory, as such, he was in full

knowledge of its report. Non-putting of such report before him in his examination under Section 313 is thus not of any consequence.

In this view of the matter, It cannot be said that by not putting the analysis report of Central Food Laboratory, any prejudice has been caused to the petitioner because it was the petitioner at whose instance the sample was sent to the Director, Central Food Laboratory for analysis and report, in consequence thereof, has been received and therefore, the petitioner himself was fully aware of the report. In my view, therefore, the judgment passed by the appellate court is erroneous and deserves to be set aside.

Consequently, the judgment and order 16.6.2006 passed by the appellate court is set aside and the judgment and order dated 4.3.2005 passed by the trial court is restored and the matter is remanded to the appellate court to rehear the appeal on merits and decide it in accordance with law.

(H.R.PANWAR),J.

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